

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 136

HOUSE BILL 2414

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 29; RELATING
TO COMPUTER SPYWARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 29, to read:

4 CHAPTER 29

5 COMPUTER SPYWARE

6 ARTICLE 1. GENERAL PROVISIONS

7 44-8101. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ADVERTISEMENT" MEANS A COMMUNICATION THE PRIMARY PURPOSE OF WHICH
10 IS THE COMMERCIAL PROMOTION OF A COMMERCIAL PRODUCT OR SERVICE, INCLUDING
11 COMMUNICATION ON AN INTERNET WEB SITE THAT IS OPERATED FOR A COMMERCIAL
12 PURPOSE.

13 2. "COMPUTER SOFTWARE" MEANS A SEQUENCE OF INSTRUCTIONS THAT IS
14 WRITTEN IN ANY PROGRAMMING LANGUAGE AND THAT IS EXECUTED ON A COMPUTER AND
15 DOES NOT INCLUDE A WEB PAGE OR DATA COMPONENTS OF WEB PAGES THAT ARE NOT
16 EXECUTABLE INDEPENDENTLY OF THE WEB PAGE.

17 3. "DAMAGE" MEANS ANY SIGNIFICANT IMPAIRMENT TO THE INTEGRITY OR
18 AVAILABILITY OF DATA, COMPUTER SOFTWARE, A SYSTEM OR INFORMATION.

19 4. "EXECUTE" MEANS THE PERFORMANCE OF THE FUNCTIONS OR THE CARRYING
20 OUT OF THE INSTRUCTIONS OF THE COMPUTER SOFTWARE.

21 5. "INTENTIONALLY DECEPTIVE" MEANS ANY OF THE FOLLOWING:

22 (a) BY MEANS OF AN INTENTIONALLY AND MATERIALLY FALSE OR FRAUDULENT
23 STATEMENT.

24 (b) BY MEANS OF A STATEMENT OR DESCRIPTION THAT INTENTIONALLY OMITTS OR
25 MISREPRESENTS MATERIAL INFORMATION IN ORDER TO DECEIVE AN OWNER OR OPERATOR
26 OF A COMPUTER.

27 (c) BY MEANS OF AN INTENTIONAL AND MATERIAL FAILURE TO PROVIDE ANY
28 NOTICE TO AN OWNER OR OPERATOR OF A COMPUTER REGARDING THE INSTALLATION OR
29 EXECUTION OF COMPUTER SOFTWARE IN ORDER TO DECEIVE THE OWNER OR OPERATOR.

30 6. "INTERNET" MEANS THE GLOBAL INFORMATION SYSTEM THAT IS LOGICALLY
31 LINKED TOGETHER BY A GLOBALLY UNIQUE ADDRESS SPACE BASED ON THE INTERNET
32 PROTOCOL, OR ITS SUBSEQUENT EXTENSIONS, AND THAT IS ABLE TO SUPPORT
33 COMMUNICATIONS USING THE TRANSMISSION CONTROL PROTOCOL/INTERNET PROTOCOL
34 SUITE, OR ITS SUBSEQUENT EXTENSIONS, OR OTHER INTERNET PROTOCOL COMPATIBLE
35 PROTOCOLS, AND THAT PROVIDES, USES OR MAKES ACCESSIBLE, EITHER PUBLICLY OR
36 PRIVATELY, HIGH LEVEL SERVICES LAYERED ON THE COMMUNICATIONS AND RELATED
37 INFRASTRUCTURE DESCRIBED IN THIS PARAGRAPH.

38 7. "OWNER OR OPERATOR" MEANS THE OWNER OR LESSEE OF A COMPUTER OR
39 SOMEONE USING THE COMPUTER WITH THE OWNER'S OR LESSEE'S AUTHORIZATION. OWNER
40 OR OPERATOR DOES NOT INCLUDE ANY PERSON WHO OWNS A COMPUTER BEFORE THE FIRST
41 RETAIL SALE OF THE COMPUTER.

42 8. "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED
43 LIABILITY COMPANY OR OTHER ORGANIZATION OR ANY COMBINATION OF THESE ENTITIES.

1 9. "PERSONALLY IDENTIFIABLE INFORMATION" MEANS ANY OF THE FOLLOWING
2 WITH RESPECT TO AN INDIVIDUAL WHO IS AN OWNER OR OPERATOR OF A COMPUTER:

- 3 (a) FIRST NAME OR FIRST INITIAL IN COMBINATION WITH LAST NAME.
4 (b) A HOME OR OTHER PHYSICAL ADDRESS INCLUDING STREET NAME.
5 (c) AN ELECTRONIC MAIL ADDRESS.
6 (d) A CREDIT OR DEBIT CARD NUMBER OR BANK ACCOUNT NUMBER OR ANY
7 PASSWORD OR ACCESS CODE ASSOCIATED WITH A CREDIT OR DEBIT CARD OR BANK
8 ACCOUNT.
9 (e) A SOCIAL SECURITY NUMBER, TAX IDENTIFICATION NUMBER, DRIVER
10 LICENSE NUMBER, PASSPORT NUMBER OR ANY OTHER GOVERNMENT ISSUED IDENTIFICATION
11 NUMBER.
12 (f) ANY OF THE FOLLOWING INFORMATION IN A FORM THAT PERSONALLY
13 IDENTIFIES AN OWNER OR OPERATOR OF A COMPUTER:
14 (i) ACCOUNT BALANCES.
15 (ii) OVERDRAFT HISTORY.
16 (iii) PAYMENT HISTORY.

17 10. "TRANSMIT" MEANS TO TRANSFER, SEND OR MAKE AVAILABLE COMPUTER
18 SOFTWARE, OR ANY COMPONENT OF COMPUTER SOFTWARE, VIA THE INTERNET OR ANY
19 OTHER MEDIUM, INCLUDING LOCAL AREA NETWORKS OF COMPUTERS, ANY OTHER NON-WIRE
20 TRANSMISSION AND A DISK OR OTHER DATA STORAGE DEVICE. TRANSMIT DOES NOT
21 INCLUDE ANY ACTION BY A PERSON PROVIDING ANY OF THE FOLLOWING:

- 22 (a) THE INTERNET CONNECTION, TELEPHONE CONNECTION OR OTHER MEANS OF
23 TRANSMISSION CAPABILITY SUCH AS A COMPACT DISK OR DIGITAL VIDEO DISK THROUGH
24 WHICH THE SOFTWARE WAS MADE AVAILABLE.
25 (b) THE STORAGE OR HOSTING OF THE SOFTWARE PROGRAM OR AN INTERNET WEB
26 PAGE THROUGH WHICH THE SOFTWARE WAS MADE AVAILABLE.
27 (c) AN INFORMATION LOCATION TOOL, SUCH AS A DIRECTORY, INDEX,
28 REFERENCE, POINTER OR HYPERTEXT LINK, THROUGH WHICH THE USER OF THE COMPUTER
29 LOCATED THE SOFTWARE, UNLESS THE PERSON RECEIVES A DIRECT ECONOMIC BENEFIT
30 FROM THE EXECUTION OF THE SOFTWARE ON THE COMPUTER.

31 44-8102. Prohibited activities; applicability

32 A. IT IS UNLAWFUL FOR ANY PERSON WHO IS NOT AN OWNER OR OPERATOR OF A
33 COMPUTER TO TRANSMIT COMPUTER SOFTWARE TO A COMPUTER, WITH ACTUAL KNOWLEDGE
34 OR WITH CONSCIOUS AVOIDANCE OF ACTUAL KNOWLEDGE, AND TO USE THE SOFTWARE TO
35 DO ANY OF THE FOLLOWING:

36 1. MODIFY, THROUGH INTENTIONALLY DECEPTIVE MEANS, SETTINGS THAT
37 CONTROL ANY OF THE FOLLOWING:

- 38 (a) THE PAGE THAT APPEARS WHEN AN OWNER OR OPERATOR OF A COMPUTER
39 LAUNCHES AN INTERNET BROWSER OR SIMILAR COMPUTER SOFTWARE USED TO ACCESS AND
40 NAVIGATE THE INTERNET.
41 (b) THE DEFAULT PROVIDER OR WEB PROXY THAT AN OWNER OR OPERATOR OF A
42 COMPUTER USES TO ACCESS OR SEARCH THE INTERNET.

43 (c) AN OWNER OR OPERATOR'S LIST OF BOOKMARKS USED TO ACCESS WEB PAGES.

44 2. COLLECT, THROUGH INTENTIONALLY DECEPTIVE MEANS, PERSONALLY
45 IDENTIFIABLE INFORMATION:

1 (a) THROUGH THE USE OF A KEYSTROKE LOGGING FUNCTION THAT RECORDS ALL
2 KEYSTROKES MADE BY AN AUTHORIZED USER WHO USES THE COMPUTER AND TRANSFERS
3 THAT INFORMATION FROM THE COMPUTER TO ANOTHER PERSON.

4 (b) IN A MANNER THAT CORRELATES THE INFORMATION WITH DATA RESPECTING
5 ALL OR SUBSTANTIALLY ALL OF THE WEB SITES VISITED BY AN OWNER OR OPERATOR OF
6 THE COMPUTER, OTHER THAN WEB SITES OPERATED BY THE PERSON COLLECTING THE
7 INFORMATION.

8 (c) WITH RESPECT ONLY TO INFORMATION DESCRIBED IN SECTION 44-8101,
9 PARAGRAPH 9, BY EXTRACTING SUCH INFORMATION FROM THE HARD DRIVE OF AN OWNER
10 OR OPERATOR'S COMPUTER.

11 3. PREVENT, THROUGH INTENTIONALLY DECEPTIVE MEANS, AN OWNER OR
12 OPERATOR'S REASONABLE EFFORTS TO BLOCK THE INSTALLATION OR EXECUTION OF, OR
13 TO DISABLE, COMPUTER SOFTWARE BY CAUSING SOFTWARE THAT AN OWNER OR OPERATOR
14 OF THE COMPUTER HAS PROPERLY REMOVED OR DISABLED AUTOMATICALLY TO REINSTALL
15 OR REACTIVATE ON THE COMPUTER.

16 4. INTENTIONALLY MISREPRESENT THAT COMPUTER SOFTWARE WILL BE
17 UNINSTALLED OR DISABLED BY AN OWNER OR OPERATOR'S ACTION.

18 5. THROUGH INTENTIONALLY DECEPTIVE MEANS, REMOVE, DISABLE OR RENDER
19 INOPERATIVE SECURITY, ANTISPYWARE OR ANTIVIRUS COMPUTER SOFTWARE INSTALLED ON
20 THE COMPUTER.

21 6. TAKE CONTROL OF THE COMPUTER BY:

22 (a) ACCESSING OR USING THE MODEM OR INTERNET SERVICE FOR THE COMPUTER
23 FOR THE PURPOSE OF CAUSING DAMAGE TO THE COMPUTER OR CAUSING AN OWNER OR
24 OPERATOR TO INCUR FINANCIAL CHARGES FOR A SERVICE THAT THE OWNER OR OPERATOR
25 OF THE COMPUTER HAS NOT AUTHORIZED.

26 (b) OPENING MULTIPLE, SEQUENTIAL, STAND ALONE ADVERTISEMENTS IN AN
27 OWNER OR OPERATOR'S INTERNET BROWSER WITHOUT THE AUTHORIZATION OF AN OWNER OR
28 OPERATOR AND THAT A REASONABLE COMPUTER USER CANNOT CLOSE WITHOUT TURNING OFF
29 THE COMPUTER OR CLOSING THE INTERNET BROWSER.

30 7. MODIFY ANY OF THE FOLLOWING SETTINGS RELATED TO THE COMPUTER'S
31 ACCESS TO, OR USE OF, THE INTERNET:

32 (a) SETTINGS THAT PROTECT INFORMATION ABOUT AN OWNER OR OPERATOR OF
33 THE COMPUTER FOR THE PURPOSE OF STEALING PERSONALLY IDENTIFIABLE INFORMATION
34 OF THE OWNER OR OPERATOR.

35 (b) SECURITY SETTINGS FOR THE PURPOSE OF CAUSING DAMAGE TO A COMPUTER.

36 8. PREVENT AN OWNER OR OPERATOR'S REASONABLE EFFORTS TO BLOCK THE
37 INSTALLATION OF, OR TO DISABLE, COMPUTER SOFTWARE, BY DOING EITHER OF THE
38 FOLLOWING:

39 (a) PRESENTING THE OWNER OR OPERATOR WITH AN OPTION TO DECLINE
40 INSTALLATION OF COMPUTER SOFTWARE WITH KNOWLEDGE THAT, WHEN THE OPTION IS
41 SELECTED, THE INSTALLATION NEVERTHELESS PROCEEDS.

42 (b) FALSELY REPRESENTING THAT COMPUTER SOFTWARE HAS BEEN DISABLED.

43 B. IT IS UNLAWFUL FOR ANY PERSON WHO IS NOT AN OWNER OR OPERATOR OF A
44 COMPUTER TO DO EITHER OF THE FOLLOWING WITH REGARD TO THE COMPUTER:

1 1. INDUCE AN OWNER OR OPERATOR TO INSTALL A COMPUTER SOFTWARE
2 COMPONENT ON THE COMPUTER BY INTENTIONALLY MISREPRESENTING THE EXTENT TO
3 WHICH INSTALLING THE SOFTWARE IS NECESSARY FOR SECURITY OR PRIVACY REASONS OR
4 IN ORDER TO OPEN, VIEW OR PLAY A PARTICULAR TYPE OF CONTENT.

5 2. DECEPTIVELY CAUSE THE EXECUTION ON THE COMPUTER OF A COMPUTER
6 SOFTWARE COMPONENT WITH THE INTENT OF CAUSING AN OWNER OR OPERATOR TO USE THE
7 COMPONENT IN A MANNER THAT VIOLATES ANY OTHER PROVISION OF THIS SECTION.

8 C. NOTHING IN THIS SECTION APPLIES TO ANY MONITORING OF, OR
9 INTERACTION WITH, A SUBSCRIBER'S INTERNET OR OTHER NETWORK CONNECTION OR
10 SERVICE, OR A COMPUTER, BY A TELECOMMUNICATIONS CARRIER, CABLE OPERATOR,
11 COMPUTER HARDWARE OR SOFTWARE PROVIDER OR PROVIDER OF INFORMATION SERVICE OR
12 INTERACTIVE COMPUTER SERVICE FOR NETWORK OR COMPUTER SECURITY PURPOSES,
13 DIAGNOSTICS, TECHNICAL SUPPORT, MAINTENANCE, REPAIR, AUTHORIZED UPDATES OF
14 SOFTWARE OR SYSTEM FIRMWARE, AUTHORIZED REMOTE SYSTEM MANAGEMENT OR DETECTION
15 OR PREVENTION OF THE UNAUTHORIZED USE OF OR FRAUDULENT OR OTHER ILLEGAL
16 ACTIVITIES IN CONNECTION WITH A NETWORK, SERVICE OR COMPUTER SOFTWARE,
17 INCLUDING SCANNING FOR AND REMOVING SOFTWARE PRESCRIBED UNDER THIS CHAPTER.

18 44-8103. Statewide concern

19 IT IS THE INTENT OF THE LEGISLATURE THAT THIS CHAPTER IS A MATTER OF
20 STATEWIDE CONCERN. THIS CHAPTER SUPERSEDES AND PREEMPTS ALL RULES,
21 REGULATIONS, CODES, ORDINANCES AND OTHER LAWS ADOPTED BY A CITY, COUNTY,
22 MUNICIPALITY OR LOCAL AGENCY REGARDING SPYWARE AND NOTICES TO CONSUMERS FROM
23 COMPUTER SOFTWARE PROVIDERS REGARDING INFORMATION COLLECTION.

24 44-8104. Civil relief; damages

25 A. IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, THE ATTORNEY
26 GENERAL, OR A COMPUTER SOFTWARE PROVIDER OR A WEB SITE OR TRADEMARK OWNER WHO
27 IS ADVERSELY AFFECTED BY A VIOLATION OF THIS CHAPTER, MAY BRING AN ACTION
28 AGAINST A PERSON WHO VIOLATES THIS CHAPTER TO:

29 1. ENJOIN FURTHER VIOLATIONS OF THIS CHAPTER.

30 2. RECOVER THE GREATER OF ACTUAL DAMAGES OR ONE HUNDRED THOUSAND
31 DOLLARS FOR EACH SEPARATE VIOLATION OF THIS CHAPTER.

32 B. A SINGLE ACTION OR CONDUCT THAT VIOLATES MORE THAN ONE PARAGRAPH OF
33 SECTION 44-8102, SUBSECTION A OR SUBSECTION B OR AT LEAST ONE PARAGRAPH OF
34 SECTION 44-8102, SUBSECTION A AND AT LEAST ONE PARAGRAPH OF SECTION 44-8102,
35 SUBSECTION B SHALL BE CONSIDERED MULTIPLE VIOLATIONS. THE NUMBER OF
36 VIOLATIONS SHALL BE BASED ON THE NUMBER OF PARAGRAPHS VIOLATED.

37 C. IN AN ACTION BROUGHT UNDER THIS SECTION, A COURT MAY:

38 1. INCREASE THE DAMAGES UP TO THREE TIMES THE DAMAGES ALLOWED BY
39 SUBSECTION A OF THIS SECTION IF THE DEFENDANT HAS ENGAGED IN A PATTERN AND
40 PRACTICE OF VIOLATING THIS CHAPTER.

41 2. AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY.

APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.

Passed the House February 21, 2005

Passed the Senate April 6, 2005

by the following vote: 59 Ayes,

by the following vote: 28 Ayes,

0 Nays, 1 Not Voting

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State


H.B. 2414

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 12, 2005,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting


Norman L. Syre
Speaker of the House
Pro Tempore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of April, 2005

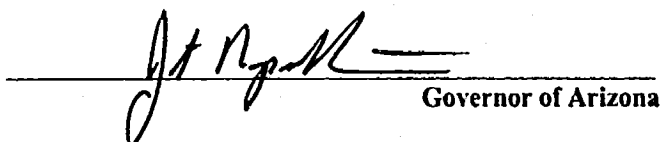
at 12:00 o'clock P. M.


Jennifer Uparra
Secretary to the Governor

Approved this 18 day of

April, 2005,

at 1st o'clock P. M.


Governor of Arizona

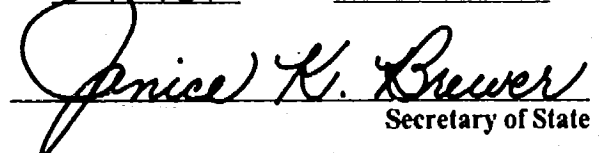
H.B. 2414

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of April, 2005,

at 4:42 o'clock P. M.


Janice K. Brewer
Secretary of State